

DEEPWATER PORT AIR AND WATER PERMITTING

ISSUE SUMMARY:

EPA currently has pending Prevention of Significant Deterioration (PSD) preconstruction air permit, title V operating air permit applications, and Section 112(g) case-by-case maximum achievable control technology (MACT) determinations for four- crude oil export projects in the central/western Gulf of Mexico. The applicability of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations (Subpart Y) has been an on-going significant issue with these projects. All but one deepwater port (DWP) applicant has applied for a 112(g) case-by-case MACT determination, with one applicant requesting Subpart Y applicability. EPA is also the National Pollutant Discharge Elimination System (NPDES) permitting authority in federal waters for DWPs and has received four permit applications.

The proposed Deepwater Ports represent a combined crude export capacity of 4.9 million barrels per day.

UPCOMING MILESTONES:

Target Goal Dates:

- **September 2020:** Energy Transfer, Blue Marlin plans to submit air permit applications.
- **September 2020:** Phillips 66, Bluewater Texas (BWTX) air permit applications are under review and the draft air permits are under development for prospective public notice in October 2020. This project will include a proposal to approve a 112(g) case-by-case MACT determination.
- **October 2020:** Sentinel Midstream, Texas GulfLink air permit applications are under review. Extensive technical review analysis and discussions related to the 112(g) case-by-case MACT application are ongoing with the company. Potentially make approvability determination on their 112(g) application in fall 2020.
- **April 2021:** Enterprise Products, SPOT Deepwater Port final permit issuance is planned after the U.S. Coast Guard (USCG)/Maritime Administration (MARAD) issue the final Environmental Impact Statement (EIS) and Record of Decision (ROD) for the SPOT Deepwater Port license application. SPOT identified NESHAP Part 63 Subpart Y as applicable for their project. The draft proposed PSD and title V air permits by EPA completed public notice and comment on December 20, 1999. EPA is serving as a cooperating agency under the National Environmental Policy Act (NEPA) and is working with USCG/MARAD to develop the EIS.

BACKGROUND:

Deepwater Port projects in Region 6 typically include an “onshore component” and an “offshore component.” The onshore component of a Deepwater Port project is under the jurisdiction and review of the Federal Energy Regulatory Commission (FERC) pursuant to Section 7(b) and (c) of the Natural Gas Act of 1938. For air permitting purposes, the Louisiana Department of Environmental Quality (LDEQ) or the Texas Commission on Environmental Quality (TCEQ) serve as the direct air permitting authority for the onshore components and EPA provides state air program implementation assistance and air permit oversight.

The offshore component of a Deepwater Port project is under the jurisdiction and review of the Deepwater Port Act of 1974. As a part of the Deepwater Port licensing process, the USCG and MARAD evaluate the Deepwater Port license application. This evaluation includes reviews from other federal and state agencies, including EPA. In the USCG/MARAD review process, an EIS is developed and EPA's Clean Air Act (CAA) permit decisions relies on the consultations conducted as part of the EIS to satisfy our federal requirements for a final agency action. EPA regards a provision of the Deepwater Port Act, 33 USC § 1501, *et seq*, as the primary source of its authority to apply the Clean Air Act (CAA) to activities associated with DWP air permitting in the western Gulf of Mexico. Therefore, EPA serves as the direct air permitting authority for the Gulf of Mexico DWP offshore components in federal waters off the coast of Louisiana and Texas, and is responsible for the review and issuance of the CAA preconstruction and operating permits.

The crude oil export ban from 1975 to 2015 was in effect at the time when 40 CFR 63 - Subpart Y was under development and permit applicants have asserted that Deepwater Port crude oil export projects proposed today were not contemplated in establishing the Subpart Y requirements. In the Subpart Y response to comments, EPA agreed with commenters that offshore terminals could be further subcategorized. However, the comments did not contain enough information to further subcategorize Subpart Y at that time. After reviewing the first two Deepwater Port air permit applications, EPA sent a letter to USCG and MARAD in April 2019 to state that EPA has held several internal deliberations concerning the varying designs and complexities associated with the recently proposed crude oil export DWP projects. In this letter, we encouraged prospective applicants to evaluate how their marine tank vessel loading project compares with a platform based proposing to comply with Subpart Y or non-platform based project proposing a Section 112(g) application in determining how to address or control Hazardous Air Pollutant (HAP) emissions.

We are also aware of one facility, Louisiana Offshore Oil Port (LOOP), that is currently exporting crude oil off the coast of Louisiana. The facility converted its historical oil import operations to allow for export in 2018 without seeking EPA permit authorizations or determinations on CAA title I, CAA title V, and CAA Section 112 applicability. LOOP currently operates with an administratively continued NPDES permit issued by EPA.

KEY EXTERNAL STAKEHOLDERS:

☒ Congress ☒ Industry ☒ States ☐ Tribes ☐ Media ☒ Other Federal Agency: USCG and MARAD
☐ NGO ☐ Local Governments ☐ Other (name of stakeholder)

MOVING FORWARD:

EPA will continue to review and draft air CAA permitting actions for the proposed Deepwater Port crude oil export projects. Potential litigation risk exists on the Section 112(g) case-by-case MACT applications that are being evaluated for approvability. EPA's legal authority to issue CAA permits has commented on in the SPOT DWP project by one commenter. EPA will respond to that comment when it issues final permits for the project and our action will be potentially challengeable at EPA's Environmental Appeals Board at that time.

LEAD OFFICE: REGION 6

OTHER KEY OFFICES: OAR, OGC